

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PICTURE PATENTS, LLC,	)	
	)	
Plaintiff,	)	
	)	Civil Case No. 07cv5567 (JGK) (HBP)
v.	)	
	)	
	)	
AEROPOSTALE, INC., DICK'S	)	PLAINTIFF PICTURE PATENTS LLC'S
SPORTING GOODS, INC., CHARLOTTE	)	ANSWER TO DEFENDANT GSI
RUSSE, INC., GSI COMMERCE	)	COMMERCE SOLUTIONS, INC.'S
SOLUTIONS, INC., FOGDOG, INC.,	)	COUNTERCLAIMS TO PLAINTIFF'S
GSI COMMERCE, INC., NATIONAL	)	THIRD AMENDED COMPLAINT
BASKETBALL ASSOCIATION, NBA	)	
PROPERTIES, INC., NBA MEDIA	)	
VENTURES, LLC, MAJOR LEAGUE	)	
BASEBALL PROPERTIES, INC., MLB	)	
ADVANCED MEDIA, L.P., LINENS 'N	)	
THINGS, INC., TWEETER NEWCO, LLC,	)	
TWEETER OPCO, LLC, BUY.COM, INC.	)	
	)	
Defendants.	)	
	)	

**PLAINTIFF PICTURE PATENTS, LLC'S ANSWER TO DEFENDANT GSI  
COMMERCE SOLUTIONS, INC.'S COUNTERCLAIMS TO PLAINTIFF'S THIRD  
AMENDED COMPLAINT**

Plaintiff Picture Patents, LLC (hereinafter referred to as "Picture Patents"), by and through undersigned counsel, hereby answers the Counterclaims of Defendant GSI Commerce Solutions, Inc. (hereinafter referred to as "GSI") as follows:

**GSI'S COUNTERCLAIMS**

1. Answering the allegations in paragraph "1" of GSI's Counterclaim, Picture Patents admits that GSI purports to bring an action for declaratory judgment under 28 U.S.C. §§

2201 and 2202 and the United States Patent Act, 35 U.S.C. §1 *et seq.* Picture Patents denies the remaining allegations contained in paragraph “1” of the GSI’s Counterclaim.

2. Answering the allegations in paragraph “2” of GSI’s Counterclaim, Plaintiff denies knowledge or information sufficient to form a belief as to the truth of whether GSI is a corporation organized and existing under the laws of the State of Pennsylvania, having a principal place of business located at 935 First Avenue, King of Prussia, PA 19406.

3. Picture Patents admits the allegations of paragraph “3” of GSI’s Counterclaim.

4. Answering the allegations in paragraph “4” of GSI’s Counterclaim, Picture Patents admits that this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338. Picture Patents denies the remaining allegations in paragraph “4” of GSI’s Counterclaim.

5. Picture Patents admits the allegations of paragraph “5” of GSI’s Counterclaims in that this Court has personal jurisdiction over Picture Patents with respect to the present case.

6. Picture Patents admits the allegations of paragraph “6” of GSI’s Counterclaims.

7. Answering the allegations in paragraph “7” of GSI’s Counterclaim, Picture Patents admits that it owns all rights, title and interest in U.S. Patent No. 6,278,455 (the “’455 Patent”) issued on August 21, 2001 by the United States Patent and Trademark Office.

8. Answering the allegations in paragraph “8” of GSI’s Counterclaim, Picture Patents admits that it has asserted that GSI infringes the ’455 patent directly, by inducement, and/or contribution. Picture Patents denies the remaining allegations of paragraph “8” of GSI’s Counterclaim.

9. Picture Patents denies each and every allegation contained in paragraph “9” of GSI’s Counterclaim.

10. Picture Patents denies each and every allegation contained in paragraph “10” of GSI’s Counterclaim.

**Count I**

11. With respect to paragraph “11” of GSI’s Counterclaim, Picture Patents incorporates by reference its above responses to paragraphs “1” through “10” of the Counterclaim as though fully set forth herein.

12. Answering the allegations in paragraph “12” of GSI’s Counterclaim, Picture Patent admits that an actual controversy exists between Picture Patents and GSI arising under the Patent Act, 35 U.S.C. § 1, *et. seq.*, concerning GSI’s infringement of the ’455 Patent.

13. Picture Patents denies each and every allegation contained in paragraph “13” of GSI’s Counterclaim.

**Count II**

14. With respect to paragraph “14” of GSI’s Counterclaim, Picture Patents incorporates by reference its above responses to paragraphs “1” through “10” of the Counterclaim as though fully set forth herein.

15. Answering the allegations in paragraph “15” of GSI’s Counterclaim, Picture Patents admits that there is an actual and justiciable controversy between the parties arising under the Patent Act, 35 U.S.C. § 1, *et. seq.*, concerning GSI’s infringement of the claims of the ’455 patent. Picture Patents denies the remaining allegations contained in paragraph “15” of GSI’s Counterclaim.

16. Picture Patents denies each and every allegation contained in paragraph “16” of GSI’s Counterclaim.

### **Count III**

17. With respect to paragraph “17” of GSI’s Counterclaim, Picture Patents incorporates by reference its above responses to paragraphs “1” through “10” of the Counterclaim as though fully set forth herein.
18. Picture Patents denies each and every inequitable conduct allegation contained in paragraph “18” of GSI’s Counterclaim.
19. Picture Patents denies each and every allegation contained in paragraph “19” of GSI’s Counterclaim.
20. Picture Patents denies each and every allegation contained in paragraph “20” of GSI’s Counterclaim.
21. Picture Patents denies each and every allegation contained in paragraph “21” of GSI’s Counterclaim.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Picture Patents respectfully requests that judgment be entered in its favor, dismissing GSI’s Counterclaims in their entirety, together with an award to Picture Patents of all the costs incurred by the Plaintiff in defense of this action, and granting all relief requested by Plaintiff in the Second Amended Complaint and such other and further relief the Court may deem just and proper.

Respectfully submitted this 2<sup>nd</sup> day of May, 2008.

/s/Thomas J. Parker

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